

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 13, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE PENA-LUNA,

Defendant.

No. 2:22-CR-00105-SAB-1

ORDER DENYING
DEFENDANT'S MOTION
TO MODIFY CONDITIONS
OF RELEASE

MOTION DENIED
(ECF No. 27)

Pending before the Court at **ECF No. 27** is Defendant JOSE PENA-LUNA's Motion to Modify Conditions of Release, specifically, Condition No. 18, requiring him to participate in GPS monitoring.

Specifically, Defendant moves to amend Condition No. 18 in the Order Following Detention Hearing on Indictment, ECF No. 19, requiring him to participate in GPS monitoring. Defendant claims the condition presents a financial burden on Defendant and his family. U.S. Probation does not object to the proposed modification and the United States defers to the Court.

The Court has reviewed Defendant's motion at **ECF No. 27** and continues to find the electronic monitoring condition is an important part of the combination of conditions that provide a reasonable assurance of both Defendant's appearance at future court proceedings and the safety of community. *See* 18 U.S.C. § 3142.

1 When the Court previously fashioned conditions of release, the Court took into
2 account the nature and circumstances of the offense charged, the weight of the
3 evidence against Defendant, as well as Defendant's history and characteristics,
4 including character, physical and mental condition, family ties, employment,
5 financial resources, length of residence in the community, community ties, past
6 conduct and history relating to alcohol and drug abuse, and also criminal history,
7 record concerning appearance at court proceedings, whether Defendant was under
8 supervision at the time of the alleged offense, and the nature and seriousness of the
9 danger to the community posed by Defendant's release. In the Court's continued
10 view, the electronic location monitoring condition is an appropriate condition of
11 release.

12 While Defendant has not had any serious issues while on pretrial release
13 during the time the electronic monitoring condition has been in place, it does not
14 then follow that the electronic monitoring condition is therefore now unnecessary
15 or superfluous. First, Defendant has a poor history of complying with prior court
16 requirements and directives as demonstrated by the four prior illegal
17 reentry/removal cases reflected in the Supplement Pretrial Services Report. ECF
18 No. 15 at 2-3. Second, Defendant also violated the terms of his supervised release
19 in one of those prior cases by returning to the United States while still on
20 supervised release. *Id.* at 3. Third, Defendant also has a history of arrests and a
21 conviction for driving offenses involving alcohol. *Id.* Finally, Defendant also has
22 failed to appear for prior proceedings on at least two occasions. *Id.* at 3-4. After
23 again considering Defendant's prior record and prior compliance with court
24 supervision, the Court continues to view the electronic location monitoring
25 condition as an appropriate pretrial release condition that imposes a minimum and
26 modest burden on Defendant while serving a necessary supervision function
27 including deterrence.
28

1 The Court has also considered that the GPS monitoring condition evidently
2 has cost Defendant \$737 since the Court released Defendant over the objection of
3 the United States on September 12, 2022. ECF Nos. 19, 27. This is a cost of a
4 little over \$100 a month (mid September 2022 through early March 2023). While
5 not insignificant, it is not an unduly burdensome cost particularly given the
6 countervailing concerns identified in this Order.

7 Accordingly, for the reasons stated in this Order, Defendant's Motion to
8 Modify Conditions of Release, **ECF No. 27**, is **DENIED**.

9 **IT IS SO ORDERED.**

10 DATED March 13, 2023.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE